

KENNETH J. MURPHY
CLERKUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Jul 27 1990 AM 10:00

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Judge	-----
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UNITED STATES OF AMERICA, . CRIMINAL NO. CR-1-90-0048
 Plaintiff, . Cincinnati, Ohio
 -vs- . Thursday, July 19, 1990
 PETER EDWARD ROSE, . 10:00 a.m. Hearing
 Defendant. . (Sentencing)

TRANSCRIPT OF PROCEEDINGS
 BEFORE THE HONORABLE S. ARTHUR SPIEGEL
 TRANSCRIPT ORDERED BY: Mr. Thomas McDonough

APPEARANCES:

For the Plaintiff: William E. Hunt, Esq. (AUSA)
 220 USPO-Courthouse Building
 Cincinnati, Ohio 45202

For the Defendant: Roger J. Makley, Esq.
 600 IBM Building
 33 West First Street
 Dayton, Ohio 45402

Robert A. Pitcairn, Jr., Esq.
 1400 Tri-State Building
 432 Walnut Street
 Cincinnati, Ohio 45202

Also Present: Reuven J. Katz, Esq.
 U.S. District Court Staff
 Members of the Press

Law Clerks: Sara S. Rorer, Esq.
 Adam P. Hall, Esq.

Courtroom Clerk: Elizabeth Schaeffer

Court Reporter: Mary Ann Ranz

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THURSDAY, JULY 19, 1990

PROCEEDINGS (10:00 a.m.)

3 THE COURT: Inasmuch as we have a long docket this
4 morning, Mr. Rose's case will be taken first; following which
5 there will be a brief recess and we'll then resume with the
6 balance of the docket.

7 Now, since the Court is now in session, no one is
8 going to be permitted to leave the courtroom until the recess.
9 Following the sentencing, Mr. Rose and his family and his
10 lawyers will leave the courtroom first, and after they've left,
11 then everyone will be free to leave.

12 I recognize that many of the reporters present here
13 this morning are dealing with deadlines, and in order to
14 accommodate you, copies of any comments that I may make and the
15 sentence I intend to -- I impose today in skeleton form will be
16 available to you in my chambers immediately following the
17 sentencing. I just ask that you go about obtaining the copies
18 from my staff in an orderly fashion.

19 I would like to remind everyone that no recording
20 devices are supposed to be in the courtroom nor is there any
21 photography. I have arranged for you to have your cellular
22 phones out in the hallway so you can use them following the
23 sentencing.

24 One final comment for the artists: If any of you are
25 using water colors, please do not shake your brushes on our

1 rug.

2 (Laughter.)

3 THE COURT: All right, folks. Now, ladies and
4 gentlemen, this is a very serious event that is occurring this
5 morning. I expect everybody to conduct themselves accordingly.

6 We're ready to proceed with the case of the United
7 States of America versus Peter Edward Rose, Criminal 1-90-44.
8 Would you step forward, Mr. Makley?

9 MR. MAKLEY: Thank you, Your Honor.

10 THE COURT: Mr. Rose, are you in pain because of your
11 leg?

12 THE DEFENDANT: No, sir; I'm okay.

13 THE COURT: Stand back there. If you are, you're
14 welcome to sit down if you would rather not stand.

15 Mr. Makley and Mr. Pitcairn --

16 MR. MAKLEY: Yes, Your Honor.

17 THE COURT: -- have you gentlemen had an opportunity
18 to review the presentence investigation in these proceedings
19 with Mr. Rose?

20 MR. MAKLEY: Yes, we have, Your Honor.

21 THE COURT: And as a result of your discussion, do
22 you wish to challenge any of the facts in the presentence
23 report?

24 MR. MAKLEY: No, Your Honor.

25 THE COURT: You know of any reason why sentence

1 should not be imposed on the defendant at this time?

2 MR. MAKLEY: I do not, Your Honor.

3 THE COURT: Do you wish to make a statement on behalf
4 of the defendant or present any information in mitigation of
5 punishment?

6 MR. MAKLEY: Your Honor, we, as you know, have
7 submitted a comprehensive sentencing memorandum setting forth
8 all of the information we wish the Court to know and to take
9 into consideration in imposing sentence in this case. And
10 beyond what's in that report, I have nothing further to say.
11 Mr. Rose would like to address the Court.

12 THE COURT: Fine. Mr. Rose, have you had an
13 opportunity to review the presentence investigation with your
14 lawyers?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you have any comments you would
17 like to make or do you wish to challenge any of the facts in
18 the report?

19 THE DEFENDANT: No, sir.

20 THE COURT: You wish to make any statement on your
21 own behalf in mitigation of punishment?

22 (The defendant and his counsel conferred privately.)

23 THE COURT: You may do so, sir.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You may do so now if you would like.

1 THE DEFENDANT: Your Honor, I would like to say that
2 I am very sorry. I am very shameful to be here today in front
3 of you.

4 I think I'm perceived as a very aggressive,
5 arrogant-type of individual, but I want people to know that I
6 do have emotion, I do have feelings, and I can be hurt like
7 everybody else, and I hope no one has to go through what I went
8 through the last year and a half. I lost my dignity. I lost
9 my self-respect. I lost a lot of dear fans and almost lost
10 some very dear friends.

11 I have to take this opportunity to thank my wife for
12 giving me so much moral support during this ordeal. It had to
13 be very tough on her when your five-year-old son would come
14 home from school and tell her that his daddy is a jailbird.

15 I really have no excuses because it's all my fault;
16 and all I can say is, I hope somewhere, somehow in the future
17 I'm going to try to make it up to everybody that I disappointed
18 and let down. Thank you very much.

19 THE COURT: Thank you, Mr. Rose. Do you know, Mr.
20 Rose, of any reason why sentence should not be imposed on you
21 at this time in these proceedings?

22 THE DEFENDANT: No, sir.

23 THE COURT: Mr. Hunt, do you know of any reason why
24 sentence should not be imposed at this time?

25 MR. HUNT: No, Your Honor.

1 THE COURT: Does the United States wish to make a
2 statement on behalf of the Government, or do you wish to offer
3 anything in regard to this case?

4 MR. HUNT: We have nothing to offer, Your Honor. We
5 would ask the Court impose a sentence within the ranges
6 established by the sentencing guidelines and the presentence
7 report that's been quite completely done in this case.

8 THE COURT: Thank you, Mr. Hunt.

9 In deciding what to do in this case, I have read
10 everything that's been furnished to the Court, including the
11 defendant's very complete sentencing memorandum and
12 attachments, the many letters I have received from the public,
13 which have been made available to Mr. Rose's lawyers as well as
14 to the United States Counsel and the Probation Department and,
15 of course, the presentence report prepared by the Probation
16 Department.

17 I have a number of comments before imposing sentence.
18 Foremost, you must recognize that there are two
19 people here today: Pete Rose the living legend, the all-time
20 hit leader, and, the idol of millions; and, Pete Rose, the
21 individual, who appears today convicted of two counts of
22 cheating on his taxes.

23 Today we're not dealing with the legend. History and
24 the tincture of time will decide his place among the all-time
25 greats of baseball. With regard to Pete Rose, the

1 individual, he has broken the law, he's admitted his guilt, and
2 he stands ready to pay the penalty. Under our system of law
3 and sense of fairness, when he's completed his sentence, he
4 will have paid his debt to society and should be accepted by
5 society as rehabilitated. Only time will tell whether he is to
6 be restored to the position of honor for his accomplishments on
7 the ball fields of America.

8 Neither are we here today to consider whether Pete
9 Rose was treated fairly by the Baseball Commissioner, whether
10 the Dowd Report was an objective and balanced report of his
11 activities, whether Pete Rose gambled on baseball, or whether
12 he should have been banished from baseball.

13 We're here today to impose a sentence on a man whose
14 life has been an inspiration to millions of people because of
15 his exploits on the ball diamond and his determination to
16 succeed in his chosen profession. We hope that he understands
17 that the sentence we impose is fair and necessary under the
18 circumstances, and that he will make the most of the
19 opportunities presented to him while confined and under
20 supervision so that he can regain confidence in himself,
21 continue his rehabilitation, continue to help others and,
22 therefore, return to society with a clean slate having paid his
23 debt.

24 Mr. Rose has pled guilty to two counts in the
25 Information: one count relating to a false tax return filed

1 for the year 1985, and the other count relating to the false
2 tax return filed for the year 1987. Because these two counts
3 cover two separate time periods, they are governed by two
4 different sentencing systems. Under Count 1, the judge
5 determines the maximum length of sentence, but the Parole
6 Commission determines how long the defendant will actually have
7 to serve. Under Count 2, the sentencing range is governed by
8 the guidelines established by the United States Sentencing
9 Commission, and the sentence imposed by the judge is the actual
10 time that the defendant will have to serve.

11 In determining the appropriate punishment for a
12 criminal offender, a judge must consider the need for respect
13 for the law, deterrence, the protection of society,
14 rehabilitation, retribution and fairness.

15 When considering these factors, the Court must look
16 to the nature of the defendant's offense and to the defendant's
17 personal characteristics. The purpose of Congress in
18 prescribing the guideline system of sentencing was to achieve
19 honesty, uniformity, and proportionality in sentencing. The
20 guidelines attempt to achieve these goals by requiring that
21 each convicted person's sentence must be determined by
22 coordinating the offense behavior categories with the offense
23 characteristic category. Thus, the guidelines consider the
24 offense conduct, classified by criminal activity, and the
25 offender characteristics, which include among others the

1 offender's relation to the victim, his role in the offense,
2 obstruction of justice, the offender's acceptance of
3 responsibility for his conduct, and his criminal history.

4 Since Mr. Rose's activity under Count 1 is
5 considered relevant conduct in determining his offense
6 characteristics under Count 2, it would not be fair to impose a
7 double sentence in this case, or consecutive sentences on Count
8 1 and Count 2. In other words, concurrent sentences are going
9 to be imposed on the two counts of the indictment so that Mr.
10 Rose will not be penalized twice for the same activity.

11 Therefore, the sentence imposed in this case
12 relating to confinement will be that mandated by the
13 guidelines. However, it should be understood that this Court
14 would have imposed a sentence on Count 1 which would result in
15 the same length of confinement as required under the
16 guidelines, even if this were not a guideline case.

17 After carefully considering all of these factors, I
18 have concluded that Mr. Rose must serve some time in a prison
19 setting for his crime in order to maintain respect for the law
20 and as a deterrent to others who might consider cheating on
21 their taxes. Although I do not think that society needs to be
22 protected from Mr. Rose, since he is on the road of
23 rehabilitating himself, our law requires that when one commits
24 a crime, he must be punished and the punishment must be fair.
25 Recognizing that Mr. Rose is a well-known figure, it might be a

1 temptation to make an example of him by imposing a heavy
2 sentence. On the other hand, because he has suffered so much
3 in the past year, in his career and financially, there might be
4 a temptation to go light. I have attempted to weigh all of
5 these considerations in determining Mr. Rose's sentence in an
6 effort to be fair to the defendant and to fulfill the Court's
7 duty to society.

8 Mr. Rose's sentence will include incarceration at a
9 Federal Correctional Institution and a halfway house,
10 supervised release and community service, and a fine to cover
11 the cost of prosecution, confinement, and supervision. We are
12 also fashioning his sentence to recognize the fact that during
13 his career he has been unselfish, helping others, particularly
14 children, both on and off the ball diamond. Hopefully Mr. Rose
15 will help the adult prisoners where he'll be confined. The
16 sentence will also require Mr. Rose to return to his roots in
17 the inner city during his supervised release in order to help
18 children there make something of themselves and to encourage
19 them to work to succeed in their goals with the same
20 determination and dedication that he did in his own life. We
21 particularly want him to show these children that in spite of
22 the mistakes he has made, he can learn and profit from them and
23 become a more humble and better person from the experience.
24 Mr. Rose's lawyers have pointed out in the sentencing
25 memorandum to the Court that his hard work led him to

1 "unprecedented heights," and I'm quoting, and "even his
2 mistakes can serve as an example that no one is immune from
3 personal problems nor above the law." We believe his enormous
4 desire to succeed can be harnessed to help children in the
5 inner city. The children with whom Mr. Rose will be working
6 need a role model with whom they can identify in order to make
7 the most of their chances in life. Pete Rose can provide the
8 necessary inspiration, if he is half the person I think he is.

9 Now, in 1984, Congress passed into law the
10 Comprehensive Crime Control Act. By doing so, the United
11 States Sentencing Commission was created and was mandated to
12 develop guidelines for federal judges to use in sentencing.
13 These guidelines were created to further the basic purpose of
14 criminal punishment: deterring crime, protecting society from
15 the offender, providing just punishment, and rehabilitating the
16 offender. The three main objectives Congress wished to achieve
17 by creating a sentencing guideline system were: honesty,
18 uniformity and proportionality in sentencing. In simpler
19 terms, the guidelines would ensure that people with similar
20 backgrounds who commit similar crimes should receive similar
21 sentences.

22 In that connection, Title 18 of the United States
23 Code, Section 3553, requires this Court to consider specific
24 factors in imposing sentence. Those factors which this Court
25 thinks are appropriate for this case are as follows: To

1 reflect the seriousness of the offense; to promote respect for
2 the law; to provide just punishment for the offense; and to
3 afford adequate deterrence to criminal conduct.

4 So that all parties and the public have an
5 opportunity to understand how the Court sentences criminal
6 defendants, the law requires me to state in open court the
7 specific reasons why a particular sentence is being imposed.

8 Peter Edward Rose pled guilty to Counts 1 and 2 of
9 the Information, each charging Filing a False Federal Income
10 Tax Return in violation of Title 28 of the United States Code,
11 Section 7206(1). The maximum penalty set forth by law for each
12 of these counts is up to three years of imprisonment, a
13 \$250,000 fine, and a \$50 special assessment. The law also
14 provides in Count 2 for a period of up to one year of
15 supervised release, and it further provides that the Court can
16 order the cost of prosecution to be paid.

17 The appropriate guidelines for the offense of Filing
18 a False Federal Income Tax Return are found at Section 2T1.3 of
19 the United States Sentencing Guidelines Manual. According to
20 that guideline, the base offense level is established depending
21 on the amount of tax loss caused by the offense since this
22 offense was committed in order to facilitate evasion of federal
23 income taxes. It has been established that the overall tax
24 loss to the government was \$162,703.15. According to the
25 sentencing guidelines, when the tax loss exceeds \$120,000 but

1 is less than \$200,000, the base offense level is 13. The
2 guideline then requires the Court to consider certain
3 adjustments to the level. In this case, there is only one
4 adjustment applicable. Since Mr. Rose has demonstrated an
5 affirmative acceptance of personal responsibility for his
6 involvement in this offense, the guideline at Section 3E --
7 excuse me -- 3E1.1 allows the Court to decrease the offense
8 level by two levels. So, the total offense level in this case
9 is therefore 11.

10 In addition to the numeric offense level created by
11 the operation of the guidelines, the second and most important
12 factor is the criminal history category of the defendant. Mr.
13 Rose has no known prior criminal convictions and, therefore,
14 according to the guidelines, he has a criminal history category
15 of Roman numeral I.

16 Based upon a total combined offense level of 11 and a
17 criminal history category of I, the guideline range for
18 imprisonment is from eight months to fourteen months. There
19 are several sentencing options available to the Court in a case
20 of this nature. The Court may impose the term of imprisonment
21 within the guideline range. The Court may also impose a
22 sentence of imprisonment that includes a term of supervised
23 release with a condition that substitutes community confinement
24 or home detention for imprisonment, providing that at least one
25 half of the minimum term of the guideline range, which would be

1 four months in this case, is satisfied by imprisonment. In
2 other words, using this option, the Court could require the
3 defendant to serve four months imprisonment followed by a term
4 of supervised release and includes four months residence in a
5 community treatment center, halfway house, or similar
6 residential facility or home detention.

7 A term of supervised release of up to one year may
8 be imposed by the Court on Count 2 only.

9 Now, probation is authorized by statute in this case
10 but not by the guidelines, because the minimum term of
11 imprisonment in the guideline range exceeds six months.

12 Now, there is a \$50 special assessment which is
13 required by the statute on each of Counts 1 and 2 of the
14 Information. There is a fine of up to \$250,000 authorized on
15 each of Counts 1 and 2. And since the guidelines control Count
16 2, the guideline range for a fine on that count is from \$2000
17 to \$250,000. The Court also requires the defendant to pay the
18 cost to the government of any imprisonment, probation, or
19 supervised release ordered. Also, pursuant to the statute, the
20 cost of prosecution can be ordered paid by the defendant.

21 Now, having set forth the elements of the sentence,
22 the Court inquires of the parties and of counsel whether there
23 are any objections or additions to the guideline findings by
24 the Court. Mr. Makley?

25 MR. MAKLEY: As to the guidelines as enunciated by

1 the Court, Your Honor, no.

2 THE COURT: Thank you. Mr. Pitcairn?

3 MR. PITCAIRN: No, sir.

4 THE COURT: All right. We'll proceed to the
5 sentencing now, Mr. Rose. Therefore, in United States of
6 America versus Peter Edward Rose, Criminal 1-90-44, the
7 defendant having pled guilty to both counts of the Information
8 and having been convicted thereby, this Court will sentence Mr.
9 Rose on the guideline count, which is Count 2, first. The
10 sentence of the Court on Count 2 is that Peter Edward Rose be
11 committed to the custody of the Attorney General of the United
12 States, or his authorized representative, for imprisonment for
13 a period of five months to be followed by a term of supervised
14 release of one year with one of the conditions of supervised
15 release being that Mr. Rose be confined in a community
16 treatment center or halfway house for a period of three months
17 immediately following his release from imprisonment. Other
18 conditions of supervised release are: that the defendant abide
19 by the standard conditions of supervised release adopted by the
20 United States District Court for the Southern District of Ohio;
21 that the defendant be prohibited from possessing a firearm or
22 any other dangerous weapon during the term of supervised
23 release; that the defendant provide the Probation Officer
24 access to any requested financial information; that the
25 defendant continue to receive psychiatric treatment for his

1 admitted gambling addiction throughout the term of supervised
2 release or until released by his psychiatrist in conjunction
3 with the approval of his Probation Officer; and that the
4 defendant pay any local and state income taxes owed due to the
5 defendant's involvement in the matter before the Court today,
6 and Mr. Rose will furnish the Probation Department with written
7 documentation with regard to this matter; and that the
8 defendant perform 1000 hours of community service to be
9 monitored by his Probation Officer at the minimum rate of 20
10 hours per week during the one year supervised release term.
11 And during those terms -- excuse me -- during those months in
12 which school is in session, Mr. Rose is to perform community
13 service at the following Cincinnati Public Elementary Schools:
14 Hayes, Oyler, Heberle, Heinhold and Rothenberg. During the
15 summer months when school is out, the defendant's community
16 service is to be performed at the LeBlond Boys Club located at
17 1621 Logan Street in Cincinnati.

18 Now, it is the further sentence of this Court that
19 the defendant is fined the sum of \$50,000 on Count 2. The
20 purpose of the fine is to cover the cost of confinement,
21 halfway house time, supervised release, and cost to Mr. Rose's
22 investigation and prosecution, and the defendant shall pay a
23 special assessment of \$50 on Count 2.

24 Now, with regard to Count 1, it is the sentence of
25 this Court that the defendant be committed to the custody of

1 the Attorney General of the United States, or his authorized
2 representative, for imprisonment for a period of five months,
3 but such sentence to run concurrently to the sentence imposed
4 in Count 2. Now, it is the further sentence of this Court that
5 the defendant be assessed the special assessment of \$50 on
6 Count 1.

7 The sentence in Count 1, which is the non-guideline
8 case, has been run -- made to run concurrently with the
9 sentence in Count 2, the guideline case, because the
10 calculation of the guidelines took into account the behavior
11 which constituted Count 1 of the Information.

12 Therefore, the sentence in total is that Peter Edward
13 Rose will be confined to an institution of the Bureau of
14 Prisons for a period of five months. It is the recommendation
15 of this Court that Mr. Rose be designated to serve his sentence
16 at the Ashland Kentucky Federal Correctional Institution Camp.
17 Following the five months of imprisonment, Mr. Rose will be
18 required to serve three months in a community treatment center
19 or halfway house here in Cincinnati as a condition of
20 supervised release. Supervised release will last one year
21 under the conditions previously noted, and there is a fine of
22 \$50,000 to be paid immediately, and a total assessment, special
23 assessment, of \$100. That completes the sentence.

24 Now, Mr. Rose, in accordance with 18 United States
25 Code, Section 3742, I hereby advise you that you have the right

1 to appeal your sentence, and if you're unable to pay the costs
2 of the appeal, you have the right to appeal to this Court for
3 leave to appeal in forma pauperis.

4 You're further advised that in accordance with the
5 provisions of Rule 4(b) of the Rules of Appellate Procedure,
6 you must file your notice of appeal with the Clerk of the
7 United States Court within ten days of the following of the
8 judgment which will be filed today, July 19th, 1990.
9 Therefore, you must file your notice of appeal on or before
10 July 29th, 1990. The Court hereby advises you that if you so
11 request, the Clerk of this Court will prepare and file
12 forthwith a notice of appeal on your behalf.

13 Now, Mr. Rose, do you understand, first: That you
14 have the right to appeal your sentence?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Second: That you have right to apply to
17 this Court for leave to appeal in forma pauperis?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Third: That you must file your notice of
20 appeal within ten days of the entry of judgment, or on or
21 before July 29th, 1990?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And, finally, if you so request, the
24 Clerk of the Court will prepare and file forthwith a notice of
25 appeal on your behalf; do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. Does the defendant need a
3 stay of execution?

4 MR. MAKLEY: Yes, Your Honor. As the Court is aware
5 from our communication with the Probation Department, Mr. Rose
6 has a medical problem with his knee that is going to require
7 surgery. I do not know how long a rehabilitative period will
8 be required. I don't expect that to be long-term, but until
9 the surgery has been performed and I have an opportunity to
10 confer with the surgeon performing it, I won't know what that
11 period will be, Your Honor.

12 THE COURT: Well, I suggest we do this: I suggest we
13 grant a stay of execution until August the 10th, and on August
14 the 10th, by 12:00 Noon on that day, if it's not continued
15 because of medical reasons, Mr. Rose is to report to the
16 institution designated by the Bureau of Prisons, which I trust
17 will be the Ashland Federal Correctional Institution Camp, on
18 that day. It will be up to him to get himself there. You can
19 determine through the U.S. Marshal Service or to the Bureau of
20 Prisons here or through his Probation Officer exactly where he
21 is supposed to report.

22 MR. MAKLEY: Yes, Your Honor.

23 THE COURT: Is Mr. Rose out on his own recognizance?

24 MR. HUNT: Yes, Your Honor. We have no objection to
25 continuing it.

20

1 THE COURT: We'll continue Mr. Rose on his own
2 recognition. And if for medical reasons it's necessary for
3 him to continue therapy, that you advise the Court and we'll
4 consider extending the stay until such time he is released by a
5 doctor.

6 MR. MAKLEY: Thank you, Your Honor.

7 THE COURT: I think that completes it. Anything
8 else, Mr. Hunt?

9 MR. HUNT: No, Your Honor.

10 THE COURT: Anything else, counsel?

11 MR. MAKLEY: No, Your Honor.

12 MR. PITCAIRN: No.

13 THE COURT: All right. Mr. Rose, you and your
14 counsel are free to leave and we'll hold up everybody as you
15 leave.

16 MR. PITCAIRN: Thank you, Your Honor.

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18 PROCEEDINGS CONCLUDED

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C E R T I F I C A T E

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I, Mary Ann Ranz, certify that the foregoing is a correct
transcript from the record of proceedings in the above-entitled
matter.

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Mary Ann Ranz

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